

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DERAC A. HANLEY,

Petitioner,

v.

ISIDRO BACA, et al.,

Respondents.

Case No. 3:14-cv-00521-MMD-WGC

ORDER

This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, filed by a Nevada state prisoner. On December 24, 2014, this Court granted petitioner's motion for counsel and appointed the Federal Public Defender to represent petitioner in this action (dkt. no. 8). On January 23, 2015, Thomas Lee of the Federal Public Defender's Office appeared on behalf of petitioner (dkt. no. 9). The Court now sets a schedule for further proceedings in this action.

It is therefore ordered that counsel for petitioner shall meet with petitioner as soon as reasonably possible, if counsel has not already done so, to: (a) review the procedures applicable in cases under 28 U.S.C. § 2254; (b) discuss and explore with petitioner, as fully as possible, the potential grounds for habeas corpus relief in petitioner's case; and (c) advise petitioner that all possible grounds for habeas corpus relief must be raised at this time in this action and that the failure to do so will likely result in any omitted grounds being barred from future review.

1 It is further ordered that petitioner shall have ninety (90) days from the date of
2 entry of this order, to file and serve on respondents an amended petition for writ of
3 habeas corpus, which shall include all known grounds for relief (both exhausted and
4 unexhausted).

5 It is further ordered that respondents shall have thirty (30) days after service of
6 an amended petition within which to answer, or otherwise respond to, the amended
7 petition. If petitioner does not file an amended petition, respondents shall have thirty
8 (30) days from the date on which the amended petition is due within which to answer, or
9 otherwise respond to, petitioner's original petition.

10 It is further ordered that respondents shall file a response to the petition,
11 including potentially by motion to dismiss, within ninety (90) days of service of the
12 petition, with any requests for relief by petitioner by motion otherwise being subject to
13 the normal briefing schedule under the local rules. Any response filed shall comply with
14 the remaining provisions below, which are entered pursuant to Habeas Rule 4.

15 It is further ordered that any procedural defenses raised by respondents in this
16 case shall be raised together in a single consolidated motion to dismiss. In other words,
17 the Court does not wish to address any procedural defenses raised herein either in
18 *seriatum* fashion in multiple successive motions to dismiss or embedded in the answer.
19 Procedural defenses omitted from such motion to dismiss will be subject to potential
20 waiver. Respondents shall not file a response in this case that consolidates their
21 procedural defenses, if any, with their response on the merits, except pursuant to 28
22 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents
23 do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within
24 the single motion to dismiss not in the answer; and (b) they shall specifically direct their
25 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v.*
26 *Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
27 including exhaustion, shall be included with the merits in an answer. All procedural
28 defenses, including exhaustion, instead must be raised by motion to dismiss.

1 It is further ordered that, in any answer filed on the merits, respondents shall
2 specifically cite to and address the applicable state court written decision and state
3 court record materials, if any, regarding each claim within the response as to that claim.

4 It is further ordered that petitioner shall have thirty (30) days from service of the
5 answer, motion to dismiss, or other response to file a reply or opposition, with any other
6 requests for relief by respondents by motion otherwise being subject to the normal
7 briefing schedule under the local rules.

8 It is further ordered that any additional state court record exhibits filed herein by
9 either petitioner or respondents shall be filed with a separate index of exhibits identifying
10 the exhibits by number. The CM/ECF attachments that are filed further shall be
11 identified by the number or numbers of the exhibits in the attachment. The hard copy of
12 any additional state court record exhibits shall be forwarded — for this case — to the
13 staff attorneys in Reno.

14 DATED THIS 28th day of January 2015.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE